

Tab A
Excerpts of Deposition of
James F. Baskin (1/16/07)

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4 CASE NO.: 05-101 ERIE
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7 ROBIN NIXON,
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9 Plaintiff,
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NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,

Defendant.

605 South Ridgewood Avenue
Daytona Beach, Florida
January 16, 2007
9:30 a.m.- 10:30 a.m.

DEPOSITION OF JAMES F. BASKIN

The above-styled cause came on for hearing
before me, June C. Miller, Court Reporter and Notary
Public, State of Florida at Large, at the time and place
indicated above for the purpose of taking testimony.

SOUTHERN REPORTING COMPANY
P.O. Box 2264 . Daytona Beach, FL 32115-2264 . 386-257-3663

1 Q. What were your responsibilities as the track
2 supervisor?

3 A. My job was to assist the division engineer in
4 the ongoing maintenance of the railroad facility.

5 Q. When you say railroad facility, could you
6 define that?

7 A. Yes. I was responsible for the right of way of
8 the tracks. I was not responsible for the bridges and
9 structures, but the tracks that the trains ran upon.

10 Q. Were you responsible for the tracks that passed
11 through the city of Erie particularly the tracks between
12 Sassafras Street and, let's say, Liberty Street?

13 A. I was responsible for the tracks through Erie.
14 Those two particular street names aren't really
15 registering where they would be exactly.

16 Q. Have you ever been -- you've been in the city
17 of Erie, correct?

18 A. I have, yes.

19 Q. Do you recall there being a section near
20 downtown Erie that -- on West 19th Street where the
21 tracks were located and they actually ran through --
22 they actually ran along the middle of West 19th Street
23 on pavement?

24 A. Yes, sir.

25 Q. When I say "on pavement," I don't mean the

1 A. He is not, sir.

2 Q. Could you tell me what exactly you discussed
3 with Mr. Taft prior to your deposition?

4 A. Mr. Taft has asked me what my duties were with
5 the Norfolk Southern Railway Company and if I had
6 knowledge of an incident that occurred there.

7 Q. Is that all that you talked about?

8 A. Basically, yes, sir, to my recollection.

9 Q. How long did you meet with Mr. Taft prior to
10 your deposition?

11 A. Approximately one hour, sir.

12 Q. Now, getting back to the West 19th Street area
13 that we're talking about, you said that you were
14 responsible for the maintenance of the track right of
15 way?

16 A. Yes, sir.

17 Q. Could you explain that in a little more detail
18 what you mean by maintenance. And I mean not with
19 respect to the rails or ties themselves. Is there any
20 maintenance that you were responsible for as far as the
21 roadway or the pavement?

22 A. Actually, in that section of Erie,
23 Pennsylvania, the railroad was -- the ownership was from
24 one end of the tie to the other end of the tie, which is
25 eight foot, six inches. We were responsible for any

1 defect which occurred in there and, obviously, in the
2 rail or the ties.

3 Of course, the City had utilities which went
4 underneath our tracks and we at times had to work with
5 the City as far as protecting them from train traffic
6 and that type of thing.

7 Q. Do you recall any individual that you worked
8 with or knew from the City?

9 A. No. No specific names. I know Lou Tullio was
10 mayor at that time and I think I only met him once.

11 Q. What about the pavement that was between or
12 over the ties?

13 A. The pavement over the ties, if that were -- the
14 railroad took care of that if there was a problem with,
15 like, a pothole in the pavement or whatever. If we had
16 to do work on the track we restored that portion.

17 Q. Who had the responsibility of inspecting -- I'm
18 assuming that you did inspect the right of way
19 occasionally. Who had that responsibility?

20 A. Exactly what time frame, sir?

21 Q. Well, in April of 1997. That was the time,
22 April 27 was when --

23 A. Because I had different inspectors and
24 different assistants, so I'm trying -- I honestly can't
25 tell you who the assigned track inspector was at that

1 the safety rule book that applied to children in
2 residential areas such as the West 19th Street area
3 where the tracks were in the roadway of 19th Street?

4 A. No. Not that I recall.

5 Q. During your weekly travels along the tracks in
6 that area, that paved area of West 19th Street, is it
7 your testimony you never saw any children playing along
8 the tracks?

9 A. I don't recall, sir. I don't recall seeing any
10 children playing along the tracks. There was a sidewalk
11 off to the side of that street and there was obviously
12 foot traffic but that's all.

13 Q. Were you aware that there was a playground
14 located along the south side of West 19th Street in that
15 area?

16 A. No, sir. I was not. I recall cemetery as an
17 open area there, but that's the only open non built-up
18 area I recall.

19 Q. Were you aware of any safety officer that would
20 have been responsible for the safety along the West 19th
21 Street tracks?

22 A. Safety officer employed by who, sir?

23 Q. By Norfolk Western or Southern.

24 A. Actually, the officers of the company no matter
25 whose responsibility befell them, everyone is

Tab B
Excerpts of Deposition of
Steve W. Frye (6/2/06)

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
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ROBIN NIXON,)
Plaintiff,)
vs.) CIVIL ACTION NO. 05-101 ERIE
NORFOLK SOUTHERN CORPORATION)
and NORFOLK SOUTHERN RAILWAY)
COMPANY, INC.)
Defendant.)

DEPOSITION FOR PLAINTIFF

16 *** *** ***
17
18 The deposition of **STEVE W. FRYE** was taken in behalf
19 of the Plaintiff before Linda A. Fox, Certified Court Reporter
20 and Notary Public for the State of Kentucky at Large at 400
21 West Market Street, Suite 1800, Louisville, Kentucky on
22 June 2, 2006 at 9:28 a.m. Said deposition was taken pursuant
23 to Notice for purposes of discovery and for use at trial
24 pursuant to the Pennsylvania Rules of Civil Procedure.
25

10:22:16 1 recorded statement and -- and, naturally, I didn't take notes
10:22:20 2 because I had the recorded statement. I considered that quite
10:22:24 3 a bit better than notes, quite frankly, and I didn't review
10:22:27 4 it. So I wouldn't differ with it, but I can't verify it one
10:22:27 5 way or the other.

10:22:34 6 Q. Okay. Do you recall, during your investigation,
10:22:36 7 looking at any area on the north side of the north track that
10:22:45 8 may have caused a hazard for -- for Mr. Nixon's bicycle, in
10:22:54 9 terms of a bump or a hole or some missing asphalt?

10:23:00 10 A. Or perhaps the propensity to hold onto a moving
10:23:00 11 train?

10:23:04 12 Q. No, that wasn't part of my question.

10:23:06 13 A. I know. I was just bringing that in. Go ahead.

10:23:11 14 Q. Well, my -- my question was, did you -- did you, in
10:23:13 15 your investigation, did you try to determine if there was
10:23:17 16 anything in the -- on the north side of the track that would
10:23:21 17 have interfered with Mr. Nixon's bicycle traveling in that
10:23:25 18 area?

10:23:29 19 A. I took photographs of the area and the photographs
10:23:32 20 are of that side of the track. Actually, they're the --
10:23:38 21 they're that side of the track, they're showing the tracks and
10:23:41 22 they're showing the city street.

10:23:45 23 Mr. Nixon was traveling on a city street, not on
10:23:50 24 railroad property when he was holding onto the side of that
10:23:52 25 train. I didn't see anything specifically in the city street

10:23:58 1 that would caused him to -- to have lost control of his
1:05 2 bicycle; however, I -- I would also say that there was a lot
10:24:10 3 of city street he could have traveled on and I didn't check
10:24:14 4 the whole street, specifically, the street where he should
10:24:18 5 have been traveling rather than where he was, but -- but, no.

10:24:21 6 Q. Okay. Well, you said that -- that Mr. Nixon was
10:24:21 7 traveling on the city street and not the right of way?

10:24:33 8 A. That's correct.

10:24:34 9 Q. Tell me what the right of way consists of?

10:24:37 10 A. I don't know. You'll have to do other investigation
10:24:40 11 on your own in reference to that, simply because I'd tell you
10:24:43 12 if I knew. But I know this much, that Mr. Nixon was traveling
10:24:50 13 on public property and not railroad property just -- and I
10:24:55 14 can't tell you exactly where it started or stops, but I
10:24:59 15 know -- I know that the railroad is responsible simply for the
10:25:01 16 rails. And -- and, to my understanding, to the end of the
10:25:06 17 railroad ties.

10:25:08 18 Now, a rail car will -- will exceed that width, and
10:25:14 19 that places him in a city street, on property owned by the
10:25:20 20 City of Erie, Pennsylvania rather than on railroad property,
10:25:23 21 when he was hitchhiking a ride by grabbing onto a moving train
10:25:30 22 while riding his bicycle.

10:25:32 23 Q. Do you know how long a railroad tie is?

10:25:36 24 A. It's less than the width of a railroad car. I can't
10:25:40 25 give you the specific width of a railroad tie without looking

10:25:44 1 at it, measuring it and, perhaps, looking at some specs on it.

10:25:49 2 Q. Well, you would agree with me that it would

10:25:50 3 extend -- well, strike that.

10:25:56 4 You -- you would agree with me -- well, let me ask

10:25:59 5 you this, do you know what the distance is rail to rail?

10:26:04 6 A. Not specifically, it's in the range of

10:26:06 7 four-something-feet.

10:26:08 8 Q. And you -- would you agree with me that if you -- if

10:26:11 9 you viewed a set of rails, whether they be here on West 9th

10:26:14 10 Street -- or West 19th Street or any railway -- commercial

10:26:21 11 railway, that the railroad ties would -- would extend beyond

10:26:36 12 the outer limits of both tracks?

10:26:36 13 A. I would. At -- no. Well, the outer limits of --

10:26:36 14 you're talking about past the rails on both sides, that's what

10:26:36 15 you're trying --

10:26:40 16 Q. Right. I mean, you have the -- you have the -- the

10:26:40 17 section between the rails and then there's the areas that are

10:26:45 18 outside of that section on -- to both outsides of the rails?

10:26:51 19 A. Yes, you're correct.

10:26:52 20 Q. And you don't know how far the railroad tie extends

10:26:52 21 beyond the rail into that outside area, do you?

10:27:00 22 A. I do, it -- it's going to be something in the range

10:27:09 23 of a foot and a half to two foot, maybe less, maybe a little

10:27:14 24 more.

10:27:14 25 Q. Okay. Well, you said earlier that you -- that Robin

10:27:18 1 was on a city street?

10:20 2 A. Yes, sir.

10:27:22 3 Q. But you don't actually know where his wheel was when
10:27:26 4 he had the accident, do you?

10:27:30 5 A. Well, it depends on where you said -- what the exact
10:27:35 6 timing of it is. Obviously, at one point during the accident,
10:27:41 7 he, himself, was under a rail car on railroad property.

10:27:50 8 Q. Right.

10:27:51 9 A. Now, as for riding along beside that rail --

10:27:56 10 railroad car, I'm absolutely certain that prior to his bicycle
10:28:05 11 not rolling along, he was on city property.

10:28:08 12 Q. Well, tell me what the basis of your certainty is?

10:28:14 13 A. The rail car itself will extend past the end of the
10:28:17 14 railroad ties. An arm on a bicycle, reaching from a bicycle,
10:28:23 15 reaching to the railway cars, additionally, gives you a buffer
10:28:27 16 zone in that relation. But he could not have -- if he were --
10:28:32 17 he would have had to been underneath for a certain number of
10:28:41 18 feet or so, the railway car itself, to have been on railway
10:28:47 19 property, because the railway car, itself, is wider than
10:28:51 20 the -- than the ends of the railroad ties.

10:28:51 21 And, if he's going along on his bicycle -- and I'm
10:28:58 22 not a scientist and I am not somebody who can mathematically
10:28:58 23 tell you -- but common sense folks will tell you if you're
10:28:58 24 reaching out touching something, then you're out further, even
10:07 25 so, than -- than the rail car would be. And if -- if that

10:29:07 1 were the case, then he was on a city street and not on railway
9:07 2 property when this accident occurred.

10:29:19 3 Q. Well, would it be fair to say that you don't really
10:29:21 4 know what the position of Mr. Nixon's arm was. The way you
10:29:25 5 described it, you kind of indicated that his was straight out
10:29:29 6 from his body so that that would put another buffer zone in
10:29:33 7 there, but you don't know that for a fact, do you? You're --
10:29:36 8 you're just making an assumption, correct?

10:29:46 9 A. No, I'm not making an assumption.

10:29:46 10 Q. Well, did you -- did you observe Mr. Nixon as he was
10:29:51 11 grabbing onto the rail car?

10:29:54 12 A. I didn't.

10:29:54 13 Q. Okay. Isn't it possible that Mr. Nixon could have
10:29:59 14 been next to the rail car but have his arm basically
10:30:05 15 straightforward in front of him and -- and hanging on with his
10:30:09 16 arm going forward rather than sideways?

10:30:13 17 A. Absolutely. And, at that point, he would have been
10:30:16 18 on a city street.

10:30:18 19 Q. And -- and you're certain that a rail car extends
10:30:23 20 beyond the end of the railway tracks?

10:30:26 21 A. Absolutely, sir.

10:30:29 22 Q. Okay. But you don't know how much? And you said
10:30:34 23 earlier that the -- the railroad -- railway tie extended a
10:30:38 24 foot and a half to two or maybe a little more feet beyond the
0:38 25 rail track --

10:30:47 1 MR. TAFT: Objection.

10:30:48 2 Q. (BY MR. SOLYMOSI) -- correct?

10:30:49 3 MR. TAFT: That -- objection. That was not his

10:30:49 4 testimony.

10:30:49 5 Q. (BY MR. SOLYMOSI) Well, then why don't you tell me

10:30:52 6 where I'm wrong Mr. -- I'm sorry -- Steve. That was what I

10:30:56 7 call -- recalled you saying, if I'm wrong --

10:30:57 8 MR. TAFT: He -- he estimated a foot and a half

10:31:02 9 to two feet, by estimate. He did not say anything about in

10:31:04 10 excess of two feet, is that correct?

10:31:06 11 MR. SOLYMOSI: I believe that he said a little

10:31:08 12 bit or a little bit more, Roger.

10:31:09 13 MR. TAFT: Well, the -- the record will reflect

10:31:11 14 that.

10:31:12 15 MR. SOLYMOSI: Yeah. Okay.

10:31:12 16 MR. TAFT: He -- he's giving you an estimate

10:31:13 17 without a measurement.

10:31:14 18 MR. SOLYMOSI: I -- I understand that.

10:31:17 19 Q. (BY MR. SOLYMOSI) Can you give me an estimate of

10:31:19 20 how -- how much fur -- how far a rail car extends beyond the

10:31:22 21 track?

10:31:24 22 A. I think I'd be going into speculation there. I'm

10:31:27 23 just trying to give you an overall view of what may have

10:31:32 24 occurred. I think you can more precisely get the facts

10:33 25 through experts that could -- could do that measuring for you.

10:31:39 1 I -- I'm just trying to give you an idea and -- and help you
.43 2 understand what may occurred as a result of what I found
10:31:46 3 through my investigation. And, basically, my investigation, I
10:31:52 4 don't believe, would be proved wrong but you're welcome to
10:31:56 5 assess those facts yourself. So I believe -- I believe my
10:31:59 6 investigation will show that young Mr. Nixon was on a city
10:32:04 7 property prior to his fall under the railway car.

10:32:10 8 Q. Okay. Well, I was just trying to determine, you
10:32:12 9 know, why you say that you were certain, because you said you
10:32:12 10 were certain, now you say that you'd be speculating on how
10:32:13 11 wide a train is but I -- I understand your position on that
10:32:23 12 now.

10:32:24 13 A. All right. I appreciate that.

10:32:27 14 Q. Were there any other witnesses that you talked to
10:32:30 15 about the accident?

10:32:32 16 A. Not to my recollection, Mr. Solymosi.

10:32:56 17 Q. Are you aware of any studies that were conducted,
10:33:01 18 with respect to the safety, along the West 19th Street tracks?

10:33:08 19 A. I'm not aware of any.

10:33:12 20 Q. In -- in the course of your job duties, that
10:33:16 21 wouldn't be something that you would encounter anyhow, is that
10:33:20 22 correct?

10:33:21 23 A. Obviously, not in this case because I'm not aware of
10:33:25 24 any.

3:25 25 Q. Okay. What -- what safety policies are you aware of

Tab C
Excerpts of Deposition of
Robert B. Glenn (5/23/06)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,)
Plaintiff,)
-vs-) CIVIL ACTION
NORFOLK SOUTHERN CORPORATION) NO. 05-101 ERIE
and NORFOLK SOUTHERN RAILWAY)
COMPANY, INC.,)
Defendants.)

DEPOSITION OF: ROBERT B. GLENN

DATE: May 23, 2006
Tuesday, 11:30 a.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 052306A

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1 document that you carry on board with you at all
2 times?

3 A. Everybody has one in their possession in their
4 -- that we carry personally.

5 Q. I see.

6 A. It's not just on the train.

7 Q. Okay. And during the break you had taken a look
8 inside the document and you identified I think
9 on page 90 where the speed limit is indicated --

10 A. 70, sir.

11 Q. -- 15 miles an hour for that stretch between
12 State and Cranberry --

13 A. That is correct.

14 Q. -- on the 19th Street tracks; right?

15 MR.

16 A. Page 70, ye

17 BY MR. SOLYMOSEI:

18 Q. Okay. Are there any other documents that you

19 would have had in your possession at the time

20 with regard to safety protocols for the

21 operation of your train?

22 A. Dispatcher's bulletin

23 Q. Dispatcher's bulletin? I'm not sure if I have
24 that or not.

25 MR. SOLYMOSI: Do you know if that's

1 Q. Was there ever any incident report filed that
2 you're aware of with regard to a person living
3 on the north side of the tracks complaining that
4 someone on the train was shouting obscenities?

5 A. None that I'm aware of; no, sir.

6 Q. Were you aware of any signs that were in place
7 regarding children along that stretch from State
8 Street to Cranberry?

9 A. No, sir.

10 Q. Prior to the accident had you noted any children
11 in that area riding bikes?

12 A. None.

13 Q. Never saw a single child riding a bike while you
14 traversed through that area?

15 A. No.

16 Q. Did you ever notice any children in the
17 playground on the south side of the street as
18 you traversed through the area?

19 A. I don't remember a playground.

20 Q. I wasn't sure if I asked you that before.

21 You don't recall a playground being

22 --

23 A. No, I don't.

24 Q. -- on the south side of the tracks in that area?

25 A. No.

1 Q. So is it fair to say then you never took any
2 steps to prevent children from coming into
3 contact with your right-of-way or the train
4 itself while you were going through that
5 neighborhood?

6 A. No, sir; I didn't observe that.

7 Q. And, I'm sorry, where were you located on the
8 train?

9 A. On the -- physically on the lead locomotive.

10 Q. Okay. How far back are you able to see?

11 A. Not very far if we're in a curve. It depends on
12 if the cars are blocking you or not.

13 Q. Okay. How many people were on the train who
14 comprised the train on the day of Robin Nixon's
15 accident?

16 A. Me and Tim Price.

17 Q. Just two of you on the train?

18 A. That is correct.

19 Q. And you were both in the lead car. Or lead
20 locomotive.

21 A. Lead locomotive.

22 Q. And you did make a written report about the
23 accident; is that correct?

24 A. Yes, sir.

25 Q. I'm going to mark this as your Deposition

1 || Exhibit 3.

(There was a discussion off the record.)

(Deposition Exhibit No. 3 marked for identification.)

8 BY MR. SOLYMOSSI:

9 Q. Could you identify Exhibit 3?

11 (The witness reviewed the document.)

13 A. Statement of train and engine crews.

14 BY MR. SOLYMOSI:

15 Q. And is this the document you referred to a
16 minute ago?

17 A. Did I refer to?

18 Q. Yes. I thought you said you wrote out a report
19 or a statement.

20 A. Oh, yes. I said that, yes.

21 Q. Okay. And that's your signature at the bottom,
22 Robert B. Glenn?

23 A. Yes, it is.

24 Q. Okay. You have marked on here that the speed of
25 the train was 8 miles per hour; correct?

1 A. That's correct.

2 Q. And how do you know it was 8 miles per hour?

3 A. That's what I asked the engineer.

4 Q. So the engineer told you that?

5 A. Yes, sir.

6 Q. Did you have any discussions with the City of
7 Erie police after the accident?

8 A. I imagine I did.

9 Q. There's an exhibit here that's been previously
10 marked as Morgan Deposition Exhibit 4 and it's a
11 City of Erie police report.

12 On the second page of the report
13 towards the bottom it does indicate -- third
14 paragraph up --

15 - - -

16 (The witness reviewed the document.)

17 - - -

18 (There was a discussion off the
19 record between Mr. Taft and the witness.)

20 - - -

21 BY MR. SOLYMOSI:

22 Q. -- that apparently --

23 MR. TAFT: Let him finish looking at
24 it.

25 MR. SOLYMOSI: Oh, I'm sorry.

1 A. Yes.

2 Q. So can you recall specifically whether or not
3 you were with Mr. Price when the two of you
4 filled these out, or --

5 A. No, sir.

6 Q. Okay. At the time of the accident, or when you
7 were notified of the accident, do you know where
8 your actual location was with respect to the
9 lead locomotive?

10 A. We were close to Amthor Steel.

11 Q. That would be --

12 A. I think it was -- we had just --

13 We were in the neighborhood of --

14 We'd gone passed Ash Street, and we
15 -- if I remember correctly, we had just gone
16 passed the signal Ash Lane right after Ash
17 Street, and --

18 Q. That's a pretty fair distance then from the
19 accident scene; correct?

20 A. Yes, sir.

21 Q. Your statement indicated that the flashers were
22 on, the bells were ringing, and the condition of
23 the crossing was okay.

24 Just to be clear, is it fair to
25 assume that that statement is based on what you

Tab D
Excerpts of Deposition of
David C. Morgan (5/23/06)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

DEPOSITION OF: DAVID C. MORGAN

DATE: May 23, 2006
Tuesday, 9:45 a.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 052306

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1 their employment with subsequent name changes
2 since. I've been an assistant to the
3 trainmaster and assistant trainmaster both in
4 Williamson, West Virginia.

5 I went to Lorain, Ohio as an
6 assistant trainmaster in '76.

7 And then in 1977 I was promoted to
8 trainmaster in Conneaut, Ohio. And I left there
9 in 1997.

10 Q. What year was that that you were appointed
11 trainmaster?

12 A. '77. 1977.

13 Q. Okay. I'm sorry to interrupt you.

14 A. And I believe it was June of 1997 I went to
15 Lexington, Kentucky as trainmaster.

16 And January 2000 I went to my present
17 position as assistant terminal superintendent in
18 Bellevue, Ohio where I'm currently located.

19 Q. It sounds like a nice long career with one
20 employer so to speak.

21 A. Yes.

22 Q. Even though there was a merger that occurred I
23 understand.

24 As far as your civil engineering
25 degree goes, did you have any specialized

1 alcohol. I probably took some train-the-trainer
2 courses because I've held a lot of classes
3 myself for RT&E employees with regard to
4 operating and safety rules. And that would
5 basically be the extent.

6 Q. And that would have been one class?

7 A. Oh, no. Probably several classes that was
8 train-the-trainer. I would get trained and then
9 I would come back to my location and then hold
10 classes for our train and engine personnel.

11 Q. Okay. Now, what exactly does the train master
12 do? What are your duties and --

13 A. The trainmaster is responsible for the safety
14 and efficient operation of the train movement
15 within the territory that he covers. He or she
16 covers.

17 Q. And would it be correct to assume that you were
18 responsible for the safe operation of the train
19 that Robin Nixon had his accident with in 1997?

20 A. I was their supervisor at the time responsible
21 for their training; that's correct.

22 Q. Okay. Well, I thought you said that you were
23 responsible for the safe and efficient operation
24 of the trains that are in your territory.

25 A. Right. Well, that's of the personnel. You

1 MR. TAFT: You may answer.

2 A. That's correct. Those rules govern the
3 operation of the trains.

4 BY MR. SOLYMOSI:

5 Q. Okay. Are there any written rules that you're
6 aware of or policies that would address
7 situations where children are known to be near
8 the railway?

9 A. Not that I recall, no.

10 Q. In your training, was that situation ever
11 discussed? And what I mean is children playing
12 alongside or being in the vicinity of your
13 railway.

14 A. The only discussion would be trespassers,
15 whether it be adults, whether it be children, we
16 would notify the local police if we observed
17 that activity taking place.

18 Q. How familiar are you or were you with these --
19 And when I say --

20 Maybe to make this simpler, when I
21 say with the tracks in question, I'm going to be
22 referring to the West 19th Street tracks that
23 were in operation at the time of Robin Nixon's
24 accident and the tracks that are in that general
25 location; is that fair?

1 A. Yeah. I was based out of Conneaut, as I told
2 you, for 20 years, and that territory was my
3 territory during that time, so I have visited
4 that stretch of track often.

5 Q. How often?

6 A. Oh --

7 Q. I mean, prior to that accident. Can you guess?

8 A. I can't even -- honestly I can't guess. I mean,
9 I --

10 Q. Would it have been dozens of times?

11 A. Oh, I'm sure, yes. Over 20 years, yes.

12 Q. Okay. And when you visited, were you on a
13 train, or did you visit while you were in a
14 vehicle or on foot?

15 A. Both.

16 Q. Both. And did you ever observe children playing
17 alongside that railway track on 19th Street?

18 A. Honestly I can't recall if I did or not because
19 that's a roadway on both sides with traffic and
20 I don't -- honestly I can't recall seeing kids
21 playing in the roadway.

22 Q. As part of your responsibilities to be
23 responsible for the crew and the operation of
24 that train, would that require you to become
25 familiar with that area in particular?

1 that territory, the physical territory along the
2 West 19th Street tracks in the area that Robin
3 Nixon was injured?

4 A. Oh, yes. Like I said, just being there 20 years
5 I better have been familiar with it.

6 Q. Okay. How would you characterize that area?
7 Are you familiar with State Street in Erie?

8 A. The overhead bridge, State, yes.

9 Q. And I'm talking about the track that would --
10 the portion of the track that would run west
11 from State, westward toward maybe Raspberry
12 Street, if you're familiar with Raspberry
13 Street.

14 A. Yes.

15 Q. I think that's fairly close. Maybe a block or
16 two short of where the paved roadway ended.

17 So for that area, how would you
18 characterize that area in terms of what was
19 there and what activities were going on?

20 A. Of course, it's right down the middle of 19th
21 Street on -- at least on the north side I
22 remember there's homes. I don't think there's
23 homes all the way on the south side.

24 But as we go down, or go east or west
25 on 19th Street, you do have vehicular traffic

1 that can also pass on either the north or south
2 side of the tracks because it is a paved road.

3 Q. Okay. Is there anything else that you would
4 consider to be significant in that area when you
5 became familiar with it?

6 A. No, other than it's kind of unique to be going
7 right down the middle of a street.

8 Q. Well, in fact, doesn't -- at the time of this
9 accident isn't it correct that the railway and
10 the right-of-way shared the roadway?

11 MR. TAFT: Object to form.

12 MR. SOLYMOSSI: Your objection is
13 noted.

14 BY MR. SOLYMOSSI:

15 Q. You can answer the question.

16 MR. TAFT: If you're able to answer
17 it.

18 Let me object to the form of the
19 roadway.

20 MR. SOLYMOSSI: Well, you can object
21 to it, Roger.

22 BY MR. SOLYMOSSI:

23 Q. But my question is would you agree that the
24 railway shared 19th Street with traffic?

25 Vehicular traffic?

1 tracks?

2 A. There is no specific training that I'm aware of
3 other than the fact that all officers of the
4 company should report trespassers.

5 Q. What do you consider to be a trespasser?

6 A. Non-railroad employees on railroad property
7 without authorization.

8 Q. And on that roadway, on 19th Street, what did
9 you consider to be railroad property?

10 A. Our right-of-way. Track structure.

11 Q. So would that be the area between the two rails?

12 A. The area from the tie ends to the tie ends.

13 Q. How long are the ties? I mean, the tie -- there
14 were no --

15 A. I don't know.

16 Q. Well, okay. I'm sorry, I interrupted you.

17 When you say the tie ends, you're
18 referring to the railroad ties.

19 A. That's correct.

20 Q. They're perpendicular and underneath the steel
21 rails?

22 A. That's correct.

23 Q. And you don't know how long they are.

24 A. I honestly don't.

25 Q. Okay. You'd agree with me that there weren't

1 Q. Are you familiar with the term shared roadway
2 with respect to trains?

3 A. See, the problem is we cross a lot of crossings.
4 Are you saying we share the crossing? We share
5 the right-of-way with the crossing?

6 Q. No, I'm talking about a situation where you have
7 perpendicular with the flow -- not perpendicular
8 -- parallel with the flow of the train and the
9 tracks, what I understand that there's a term of
10 art out there in the railway world that there
11 are shared pathways, shared roadways where
12 trains and pedestrians, vehicles, bicycles
13 travel in a parallel direction on the same
14 roadway.

15 You're not familiar with that term or
16 that concept?

17 A. Actually, no. I'm saying we have a
18 right-of-way. Now, once we go through, vehicles
19 can go back and forth, people can go back and
20 forth. When we are going through, a vehicle can
21 be on the north side and a vehicle can be on the
22 south side and go in the same direction or in
23 the opposite direction, but they aren't sharing
24 the same spot at the same time.

25 Q. Well, I think that's obvious. If they are,

1 there's going to be a collision; right?

2 A. Right. So, I mean, the term shared roadway, I
3 mean, we have our right-of-way through there
4 that we use, and once we get through, then other
5 people can cross there, yes, if that's what you
6 mean.

7 Q. You'd agree that when we talk about the roadway,
8 we're talking about the area curb to curb that
9 contains a pathway for vehicles traveling west
10 and when I say vehicles, I mean autos or
11 bicycles --

12 A. Right.

13 Q. -- and vehicles and bicycles traveling east
14 adjacent to the tracks that are in the center of
15 the roadway; right?

16 A. Yeah.

17 Q. Okay. And you're telling me that it was
18 possible at the time for vehicular traffic to be
19 on that same roadway at the same time that the
20 train was traveling down the center of the
21 roadway on its right-of-way. Is that a fair
22 statement?

23 A. You're going to have to repeat that one again.

24 Q. You told me earlier that it was possible for
25 vehicles to be traveling on the roadway on West

1 are attracted to watch it and look at it and
2 that kind of stuff. Maybe you got railroad
3 buffs.

4 Q. What about with regard to children? Do you
5 understand that sometimes children are attracted
6 to railways and locomotives and cars?

7 A. Sure. Children, adults, yeah.

8 Q. What kind of training have you had in that
9 regard during all the years you've been with the
10 railroad?

11 A. Nothing specific, other than, as I told you
12 before, if there's any trespassers, we would
13 notify the local authorities.

14 Q. Would it be fair to say then that you did
15 nothing in the time that you were a trainmaster
16 to try to prevent such accidents as occurred to
17 Mr. Nixon?

18 A. That's correct. That's the first accident of
19 that type that even occurred.

20 Q. Do you know why the tracks were laid in the
21 middle of 19th Street?

22 A. I don't know if the tracks were there first and
23 the street was there second or the street was
24 there first and the tracks were there second. I
25 don't know the history behind it.

1

2 (The witness reviewed the document.)

3

4

(Mr. Taft reviewed the document.)

5

6

BY MR. SOLYMOSI:

7 Q. It states: Upon speaking to the engineer of the
8 Norfolk and Southern train, Tim Price -- he gave
9 the following information to us: The train was
10 bound for Buffalo, New York from Conneaut, Ohio.
11 The lead engine -- I'm going to skip the number,
12 the next engine and the third -- he identified
13 the numbers of the train. He says: The train
14 was carrying 150 loads (cars) of coal with none
15 empty. The train was 7,225 feet long weighing
16 18,983 tons traveling 15 miles per hour.

17 Do you have any idea why there might
18 be a discrepancy between the police report and
19 your report?

20 A. No.

21 Q. How were the tracks classified on 19th Street at
22 the time of this accident?

23 A. The maximum speed limit was 15 miles per hour.

24 Q. And how is that determined?

25 A. The engineering department who's responsible for

Tab E
Excerpts of Deposition of
Ervin L. Nixon (1/18/07)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

5 ROBIN NIXON,)
6 Plaintiff,)
7 vs.) CIVIL ACTION
8 NORFOLK SOUTHERN CORPORATION)
9 and NORFOLK SOUTHERN RAILWAY)
10 COMPANY, INC.,)
11 Defendants.)

12 Deposition of ERVIN LEE NIXON, SR.

13 Thursday, January 18, 2007

14 - - -

15 The deposition of ERVIN LEE NIXON, SR., called
16 as a witness by the defendants, pursuant to notice and
17 the Federal Rules of Civil Procedure pertaining to the
18 taking of depositions, taken before me, the
19 undersigned, Karen Burkett, a Notary Public in and
 for the Commonwealth of Pennsylvania, at the offices
 of MacDonald, Illig, Jones & Britton, L.L.P.
 100 State Street, Suite 700, Erie, Pennsylvania
 16507, commencing at 9:30 o'clock a.m., the day and
 date above set forth.

21 COMPUTER-AIDED TRANSCRIPTION BY
MORSE, GANTVERG & HODGE, INC.
22 PITTSBURGH, PENNSYLVANIA
412-281-0189

24 ORIGINAL

25

1 Q Do you recall whether your son, Robin,
2 owned or used a bicycle in April of 1997?

3 A He owned a bicycle.

4 Q Do you recall what type of bicycle it was?

5 A No. It was a bike I bought from
6 Value City.

7 Q Bicycles, as I understand it, come in many
8 shapes and forms. Some of them have 12 speeds for
9 racing on roads, others are called mountain bikes with
10 knobby tires to use off the street, others are
11 bicycles that are more traditional in nature.

12 A It wasn't fancy.

13 Q Okay. Just a basic bicycle?

14 A Yes.

15 Q Do you have any specific recollection of
16 events that occurred on the date of this accident
17 before you learned of the accident?

18 A He asked me if he could go visit
19 Chris Houston.

20 Q Would that request have been sometime
21 during the morning of April 27th, 1997?

22 A Yes.

23 Q Again, I am going by information in the
24 police accident report to try to get a sense of time.
25 According to the police accident report, the accident

1 occurred on Sunday at about 12:24 p.m.

2 Do you have a recollection, Mr. Nixon, as
3 to when it was your son, Robin, asked you if he could
4 visit his friend, Chris Houston?

5 A He had asked me that morning.

6 Q Okay. Sometime in the morning?

7 A Right.

8 Q Any sense of what time? And if I push too
9 far on the specifics and you get to a point you don't
10 recall, that is when I want you to let me know you
11 don't recall.

12 Do you have a recollection as to
13 approximately what time that morning you would have
14 had this discussion?

15 A I can't give an exact time. I just know it
16 was during the morning.

17 Q Now, did you know Chris Houston before
18 Robin made this request?

19 A I've known Chris since he was a little kid.

20 Q How did you know Chris Houston?

21 A His stepfather and I grew up together, and
22 I knew his mom casually.

23 Q Who is Chris' stepfather that you knew
24 growing up?

25 A Roosevelt Pinkston.

1 Q And you mentioned that you knew
2 Chris' mother casually. What is her name?

3 A I don't know her name. I just know her
4 from seeing her around.

5 Q When you say you knew Chris Houston since
6 he was a kid because he was a stepson of your friend,
7 Roosevelt Pinkston, did you know him in a social
8 setting or otherwise, or did you just know of him?

9 A I knew him from kindergarten in a social
10 setting. I used to play with him before school every
11 day, push him on a swing just like I did Robin.

12 Q Okay. Was Robin a friend of Chris Houston
13 from, say, kindergarten on?

14 A They were close, yes.

15 Q Okay. So this would not have been the
16 first time that Robin may have asked you if he could
17 go see Chris and play with him?

18 A It wasn't.

19 Q At the time that Robin made this request,
20 where did Chris Houston reside?

21 A On 21st Street between Sassafras and Peach.

22 Q That would be West 21st Street; correct?

23 A Correct.

24 Q Do you know whether your son, Robin, had
25 ever visited Chris Houston at his home on

1 The accident occurred on April 27th, 1997.

2 Were these two prior instances where Robin visited

3 Chris on West 21st Street during the year 1997?

4 A Yes.

5 Q Do you know if they were the same month?

6 A No recollection.

7 Q Okay. On each of those two prior
8 occasions, did Robin ask for your permission to visit
9 Chris at his house?

10 A He always asks for my permission.

11 Q When Robin asked for your permission on
12 April 27th, 1997, did you place any restrictions on
13 what he was allowed to do that day

14 A He wasn't supposed to go past
15 21st Street.

16 Q When you say "go past," you mean go north?

17 A Below.

18 Q Okay. And again, so we're clear, when you
19 say "below," in the city of Erie the streets --

20 A Would be headed north.

21 Q Headed north. Because the streets go from
22 high numbers like 21st to the north, to the low
23 numbers along the bay and the lake; is that correct?

24 A Yes.

25 Q Do you recall what you specifically told

1 Chris the morning of April 27th, 1997 about not going
2 below or north of West 21st Street?

3 A I didn't tell Chris anything.

4 Q I'm sorry. Do you recall what you
5 specifically told Robin the morning of the accident
6 about not going below or north of West 21st Street?

7 A Just not to go.

8 Q And why was that?

9 A My own personal reasons? I was afraid of
10 the traffic and the railroad.

11 Q Have you resided in the city of Erie all or
12 most of your life?

13 A Most of my life.

14 Q So you were familiar with the fact that
15 there was a single set of Norfolk Southern tracks that
16 ran east and west through West 19th Street in the city
17 of Erie?

18 A Very familiar.

19 Q And you were aware that there was a city
20 street on both sides which there could be traffic --

21 A Yes.

22 Q -- or that sort of thing?

23 Q Why did you think that it might be
24 dangerous for your son, Robin, to go north of
25 21st Street in the vicinity of West 19th Street and

1 the Norfolk Southern tracks?

2 A Because of traffic and news reports of
3 children being hit by cars and buses.

4 Q When you had this discussion with Robin on
5 the morning of April 27th, 1997, did you give him any
6 specific reasons as to why you did not want him to go
7 below or north of West 21st Street?

8 A No, I didn't.

9 Q You testified a bit earlier that there
10 were two prior occasions in 1997 that you also gave
11 Robin permission to go to Chris Houston's house on
12 21st Street?

13 A Yes.

14 Q On both of those occasions -- I will put it
15 this way: On either of those occasions, did you give
16 any instructions or place any restrictions on Robin in
17 visiting Chris Houston?

18 A I took him down there and gave him the same
19 instructions, "Don't go below 21st Street."

20 Q When you say you took him down there, you
21 are referring to Robin, of course?

22 A Yes.

23 Q How did you take Robin down to
24 West 21st Street?

25 A I rode him on his bike.

1 Q In other words, both of you riding on the
2 bike and, what, him behind?

3 A No, him on the crossbar.

4 Q Okay. When you took your son, Robin, to
5 West 21st Street with you in the bicycle seat and him
6 on the crossbar, did you go down for the purpose of
7 showing him specifically where he was allowed to be,
8 and where he was not allowed to be?

9 A No, I just took him to Chris's house.

10 Q When you got him to Chris's house, did you
11 give him instructions that you did not want him to go
12 north or below 21st Street?

13 A Yes.

14 Q Did you tell him why it was?

15 A Yes.

16 Q What did you tell him?

17 A I told him there was too much traffic, and
18 I was afraid of him getting hurt.

19 Q Did you say anything to him at the time
20 about the railroad tracks?

21 A I showed him where they were, and I told
22 him not to go across them.

23 Q Did you tell him to stay away from the
24 railroad tracks?

25 A I thought that was evident when I said,

1 "Don't go that way."

2 Q You just described the first time that
3 Robin went to Chris's house where you took him down
4 there, showed him the street, and gave him those
5 instructions.

6 A Yes.

7 Q The second time that he went to Chris's
8 house, when he asked for your permission again, and
9 you said you gave him the same instructions?

10 A Yes.

11 Q "Don't go below 21st Street or north of
12 21st Street"? Did you go down to Mr. Houston's house
13 again with Robin?

14 A Yes.

15 Q So the second time, did you again ride his
16 bicycle down with your son, Robin, on the crossbar?

17 A No, that time we walked.

18 Q And that second time when you got down to
19 Chris Houston's house on 21st Street, did you again
20 impress upon Robin, "You are not to go north or below
21 21st Street"?

22 A Yes.

23 Q Did you essentially tell him the same thing
24 about traffic and about staying away from the railroad
25 tracks?

1 A Yes.

2 Q Directing your attention back to the
3 morning of the accident. So this would be the third
4 time where Robin asked if he could go to Chris's house
5 am I correct in understanding that you did not go with
6 him this particular occasion?

7 A You are correct.

8 Q But before Robin left the house, did you
9 again give him those same instructions, "You are not
10 to go below or north of 21st Street," and he was to
11 stay away from the railroad tracks?

12 A I just said, "Remember what I told you?"
13 And he said he did.

14 Q Again, what you had told him was, "Don't go
15 north of 21st Street, and stay away from the railroad
16 tracks"?

17 A That is correct.

18 Q And his response is, "I know that. I
19 remember that"?

20 A Yes.

21 Q Mr. Nixon, how did you first learn of your
22 son's accident on April 27th, 1997?

23 A Telephone call from a surgeon at
24 Saint Vincent. I think he was an Indian doctor.

25 Q You don't recall his name at this time?